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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/767,985

01/29/2004

Daniel Perreault.

S63.2-11023-US01

5338

490

7590

09/27/2006

VIDAS, ARRETT & STEINKRAUS, P.A.
6109 BLUE CIRCLE DRIVE
SUITE 2000
MINNETONKA, MN 55343-9185

EXAMINER

COZART, JERMIE E

ART UNIT

PAPER NUMBER

3726

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

Office Action Summary	Application No.	Applicant(s)	
	10/767,985	PERREAULT ET AL.	
	Examiner	Art Unit	
	Jermie Cozart	3726	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 44-48 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-42 is/are allowed.
- 6) ☒ Claim(s) 1,4,6,9,12,13,16 and 18 is/are rejected.
- 7) ☒ Claim(s) 2,3,5,7,8,10,11,14,15,17,19, and 20-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by White et al. (US 6,171,234 B1).

White discloses an apparatus (10) for loading a medical device (30) into a catheter delivery system. The apparatus (10) has an alignment plug (22) with an external taper (i.e. outer tapered surface fig. 6) for matingly engaging said crimping apparatus. The apparatus further comprising an introducer shaft (not labeled fig. 6) attached to knob (28). *See column 3, lines 23 – 65, and figures 1 and 6 for further clarification.*

White discloses an apparatus comprising a crimping portion (12, 14, 28) for crimping a medical device and a loading portion (20, 22) for a loading the medical device into a catheter, the crimping portion having a crimping aperture (located between 12 and 14 in fig. 1). The loading portion (20, 22) having an internal lumen, the apparatus is constructed and arranged for coaxial self-alignment between the crimping aperture and internal lumen. *See figure 1 also for further clarification.*

Note that “for loading a self-expanding stent”, “constructed and arranged to matingly engage a crimping apparatus for reducing the diameter of said medical device from a first diameter to a second diameter prior to loading said medical device into said

catheter delivery system", and "for matingly engaging said crimping apparatus" are recitations of the intended use, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

3. Claims 1, 4, 6, 9, 12, 13, 16, 18, and 43 are rejected under 35 U.S.C. 102(b) as being anticipated by Penner et al. (5,725,519).

Penner discloses an apparatus (16) for loading a medical device (12, which can be considered a self expanding stent) into a catheter delivery system (BC), the loading apparatus/portion (16) constructed and arranged to matingly engage a crimping apparatus (14) for reducing the diameter of the medical device (12) from a first diameter to a second diameter prior to loading said medical device (12) into the catheter delivery system (BC). The apparatus further comprises an introducer shaft (opening not labeled in fig. 4 through which an introducer plug 64 extends), the introducer plug has a lumen (60) through which the medical device is introduced. The introducer plug (64) is modular with the introducer shaft. The crimping apparatus (14) is an actuation hub, an internal taper (20, 30) for matingly engaging the loading apparatus (16) via introducer plug (64). See column 5, line 15 – column 7, line 49, and figures 1-4 for further clarification.

Note that "for loading a self-expanding stent" is a recitation of the intended use, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably

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distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Allowable Subject Matter

4. Claims 2, 3, 5, 7, 8, 10, 11, 14, 15, 17, and 19-24 are objected to as being dependent upon rejected base claims, but would be allowable if rewritten in independent form including all of the limitations of their respective base claim and any intervening claims.

5. Claims 25-42 are allowed.

Response to Arguments

6. Applicant's arguments, see pages 15 and 17-19, filed 3/30/06, with respect to Ching and Austin have been fully considered and are persuasive. The rejection of these claims with respect to Ching and Austin has been withdrawn.

7. Applicant's arguments filed 3/30/06 have been fully considered but they are not persuasive.

Applicant argues that White does not disclose an apparatus for loading a self-expanding stent.

In response, the Examiner maintains that "for loading a self-expanding stent" is functional language, and that the "self-expanding stent" is not a positively recited limitation and does not form part of the claimed invention. Also the rejection of claims 2 and 4 with respect to White has been withdrawn.

Applicant argues that Penner does not disclose "a self-expanding stent".

In response, the Examiner maintains that "for loading a self-expanding stent" is functional language, and that the "self-expanding stent" is not a positively recited limitation and does not form part of the claimed invention. Also the rejection of claims 2 and 4 with respect to White has been withdrawn.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jermie Cozart whose telephone number is 571-272-4528. The examiner can normally be reached on Monday-Thursday, 7:30 am - 6:00 pm.

10. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bryant can be reached on 571-272-4526. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JERMIE E. COZART
PRIMARY EXAMINER

September 18, 2006